80-2069

Office-Supreme Court, U.S.
FILED
MAY 4 1981
ALEXANDER L. STEVAS,

in the

Supreme Court

of the

United States

OCTOBER TERM 1980

NO. 80-5144

ANTHONY "TONY CAUCCI,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ANTHONY "TONY" CAUCCI
pro-se
2331 Adams Street #10
Hollywood, Florida 33020

TABLE OF CONTENTS

QUESTIONS PRESENTED	2-4
LIST OF PARTIES TO THE PROCEEDING	5
STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED	6
STATEMENT OF THE CASE	7-12
ARGUMENT	13-35
CONCLUSION	36
APPENDICES:	
APPENDIX A: OPINION AND DECISION IN THE INSTANT CAUSE OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT OF JANUARY 27, 1981.	A-1 - A-26
APPENDIX B: THE INDICTMENT	A-27 - A-34
APPENDIX C: 18 USC SECTION 1623 FALSE DECLARATIONS BEFORE GRAND JURY OR COURT	A-35 - A-38
APPENDIX D: VARIOUS QUESTIONS AND ANSWERS IN TESTIMONY OF ANTHONY "TONY" CAUCCI BEFORE THE FEDERAL GRAND JURY IN FT. LAUDERDALE ON FEBRUARY 12, 1979.	A-39 - A-40
CERTIFICATE OF MAILING	

Petitioner prays that a Writ of Certiorari issue to review the judgment and decision of the United States Court of Appeals for the Fifth Circuit entered on January 27, 1981, which affirmed a judgment of conviction by the United States District Court for the Southern District of Florida, after trial by jury on January 10, 1980.

The Fifth Circuit Court of Appeals denied petitioner's Motion For Rehearing in that Appellate Court on March 23, 1981.

The United States District Court for the Southern District of Florida had convicted Caucci of falsely testifying before a Grand Jury on the third count of a three count inidctment.

QUESTIONS PRESENTED FOR REVIEW

1. Does the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the conviction after jury trial by The United States District Court for the Southern District of Florida on January 10, 1980, conflict with the Fifth Amendment to the United States Constitution denying the petitioner due process of law and fundamental fairness of trial, in that the United States failed to introduce at trial evidence sufficient to establish a prima facie case of guilt.

2. Does the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the conviction after jury trial by The United States District Court for the Southern District of Florida on

January 10,1980, conflict with the Fifth Amendment to the United States Constitution by denying the petitioner due process of law and fundamental fairness of trial, in that the United States District Court failed to give the jury the complete reinstructions requested by said jury after they had commenced their deliberations, as to the elements of "specific intent", and the definition of "knowingly", required to convict under a perjury indictment.

3. Does the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the conviction after jury trial by The United States District Court for the Southern District of Florida on January 10, 1980, conflict with the Fifth Amendment to the United States Constitution by denying the petitioner due process of law and fundamental fairness of trial, in

that the United States District Court had denied the petitioner Caucci's Motion for Mistrial based on the prosecutor in the trial court being permitted to argue to the jury, as if it were a proven fact, that Caucci, the defendant in the United States District Court, had borrowed money from one Tony Plate, where that issue of fact had already been decided adversely to the Government, based upon the District Court's entry of a judgment of acquittal at the close of all the evidence of Counts I and II of the three count indictment against Caucci, Count I charging that Caucci had made a false declaration before the Grand Jury when he said that had had never borrowed any money from Tony Plate.

PARTIES TO THE PROCEEDINGS

The caption of the case pending on Petition for Writ of Certiorari before this Honorable Court contains the names of all parties hereto, so no listing is presented in accordance with the provisions of rule 21 of the Rules of the Supreme Court.

In further accordance with rule 21.1(b) the opinion delivered in the instant cause by the United States Court of Appeals for the Fifth Circuit is included in the appendix accompanying this petition at page A-1.

GROUNDS FOR INVOKING THE JURISDICTION OF THIS COURT

The judgment, opinion and decision of the United States District Court for the Fifth Circuit, of January 27, 1981, is sought to be reviewed herein. The aforesaid order, judgment and decision was subject to a Motion for Rehearing by the defendent Caucci in the aforesaid Fifth Circuit and that Motion for Rehearing was denied on March 23, 1981.

Jurisdiction of this Court is invoked under 28 USC Section 1254 (1) and 28 USC Section 2101. Pertinent hereto are the provisions of Rule 17 of the United States Supreme Court.

STATEMENT OF THE CASE

A three count indictment was filed in the United States District Court for the Southern District of Florida on or about June 4, 1979, charging the petitioner, Caucci, with three counts of knowingly making a false material declaration while under oath as a witness before the Grand Jury in Ft. Lauderdale, Florida, in violation of USC Section 1623 (App. A-27 - A-34).

The first count of the three count indictment charged that Caucci had made a false declaration before the Federal Grand Jury when he said that he had never borrowed any money from one Tony Plate.

The second count charged that he had lied when he testified that he had not told anyone he had borrowed money from said Tony Plate.

The third count charged that he had lied when he stated that none of his associates had ever borrowed money from Plate.

At the close of all the evidence, the District Court granted judgment of acquittal as to Counts I and II of the indictment, evidently concluding that the Government had failed to establish beyond a reasonable doubt that Caucci had borrowed money from Plate.

Thereafter, Caucci was convicted at the conclusion of the trial by jury of the third count of the three count indictment, which charged him with falsely testifying before a Grand Jury. The events at trial which denied Caucci fundamental fairness of trial and due process under the Fifth Amendment are the subject of consideration in the argument portion of this Petition.

The aforesaid indictment and ensuing trial were based on the following facts. In June of 1976, one Louis Maricondi, faced with indictment in the United States District Court for the Western District of Pennsylvania, entered into an agreement with the United States Government to become an informer in an under cover capacity in Florida, as to certain matters involving a man suspected by the Federal Government of being a "loan-shark", in the South Florida area. The suspected loan-shark was one Tony Plate, frequently referred to by his initials "T.P.".

Before becoming an under cover Government informer, Maricondi had borrowed, allegedly, $15,000 from the aforesaid Tony Plate, at an alleged usurious rate of interest.

Maricondi, under the guise of opening a new business, went to Florida as an under

cover agent, on the Government's investigation of Plate and others. The Government asked Maricondi to find someone who could verify the existence of the original $15,000 loan which Maricondi claimed had been advanced to him by Plate and also the Government instructed Maricondi to re-negotiate the loans repayment terms with Plate.

In a recorded telephone conversation Maricondi asked Caucci to talk to Plate about Marcondi's debt.

In a second recorded conversation, Caucci told Maricondi that Plate had agreed to new terms concerning Maricondi's debt which were more favorable to Maricondi.

It is important to note, for purposes of this Petition, and Caucci's position herein, that there was no evidence to indicate that the aforesaid debt was occasioned by a loan, and most particularly by a loan

at a usurious rate of interest.

A Federal Grand Jury in Ft. Lauderdale, Florida, investigating Plate and others, subpoenaed Caucci to testify concerning Plate's loan-sharking activities. He testified, under oath, that he had never borrowed any money from Plate, and that he had never told anyone that he had borrowed money from Plate. Additionally, he stated as follows:

> A JUROR: You said you never borrowed any money personally from Anthony Plate. Have you ever had any associates of yours that ever borrowed any money?
> THE WITNESS (CAUCCI): Not that I know of. If anybody did, they didn't tell me about it. People don't really tell things if they borrow money like that.
> Q. (By Mr. Schwartz): Nobody ever told you that he owed Plate money, a loan-sharking loan?
> A. Not that I know of, and if they did, I wouldn't want to pay any attention, wouldn't want to know.
>
> (App. A-39 & A-40)

The first count of the three count indictment charged Caucci with making a false

statement before the Grand Jury when he said he had never borrowed any money from Plate, and the second count charged he had lied when he testified that he had not told anyone he had borrowed money from Plate.

The third count of the indictment charged that Caucci had lied when he stated that none of his associates had ever borrowed money from Plate.

As aforesaid, the District Court entered a judgment of acquittal, at the conclusion of the evidence, in Caucci's favor on Counts I & II, since the Government had failed to establish beyond a reasonable doubt, that Caucci had borrowed money from Plate, a point which also becomes important in the argument portion of this petition.

After trial by jury, Caucci was convicted on the third count, charging that he lied when he had stated to the Grand Jury that none of his associates had ever borrowed money from Plate.

ARGUMENT AND REASONS RELIED ON FOR THE ALLOWANCE OF WRIT OF CERTIORARI

A.

The decision of the Fifth Circuit Court of Appeals affirming the District Court conflicts with the Fifth Amendment rights of the petitioner by denying him due process of law and fundamental fairness of trial, in that the Government failed to introduce at petitioner's trial evidence sufficient to establish a prima facie case of guilt.

The aforesaid point was raised in the trial court by Motion for Judgment of Acquittal at the conclusion of the Government's case, which the District Court denied. The basis was, of course, the failure of the Government to introduce

sufficient evidence to establish a prima facie case of guilt. The Motion for Acquittal was directed at Count III of the indictment, which charged the petitioner with making false statements before a Grand Jury involving two questions and two answers which are as follows:

> A JUROR: You said you never borrowed any money personally from Anthony Plate. Have you ever had any associates of yours that ever borrowed any money?
> THE WITNESS (CAUCCI): Not that I know of. If anybody did they didn't tell me about it. People don't really tell things if they borrow money like that.
> Q. (By Mr. Schwartz): Nobody ever told you that he owed Plate money, a loan-sharking loan?
> A. Not that I know of, and if they did, I wouldn't want to pay any attention, wouldn't want to know.
>
> (App. A-39 & A-40)

The evidence introduced by the Government reveals that the word loan was never used in conversations between the defendant Caucci and the informant Maricondi and similarly the word loan-shark is never used.

There is without question, talk concerning the fact that Maricondi owed money to Tony Plate, however, the reason that the money is owed is never stated. Petitioner contends that the law is clear, that as a predicate to the offense of perjury, the question must be phrased so accurately in order to elicit the information sought by the interogator that a charge nor conviction of perjury cannot stand where a vague word or where words are interassuch as to make the question succeptible to various interpretations, which said interpretations are not the same in both the mind of the questioner and the answerer.

Bronston vs. United States 409 US 352 (1973); the United States vs. Slawik 58 F. 2nd 75 (3rd Cir. 1977); United States vs. Tinnelli 577 F. 2nd 914 (3rd Cir. 1978); United States vs. Esposito 358 F. Supp. 1032 (N.D. Ill. 1973).

The question to be first determined is whether or not the word associate is such a deliberately artless and vague term as to be an insufficient in a question to form the basis of perjury prosecution.

To different people the word associate can obviously mean different things. For an example, to an attorney, an associate may be an employee of a law firm who is not a partner. To another person, an associate may be someone with whom he is in business, while to still others, the term may simply conjure up visions of friends or perhaps mere acquaintances. As far as the record of the trial or the indictment indicates nothing is offered by the Government to show what meaning the Government placed upon the word associate when they asked the question of Caucci before the Grand Jury, nor is there any evidence to show what the defendant, Caucci, understood and meant by associate

when he answered the question before the Grand Jury in the negative. In fact, the record clearly indicates that the petitioner Caucci had no understanding at the time of his Grand Jury testimony, which is the basis of his indictment, as to what the Government meant when it used the word associate directed to him. Prior to the questions and answers which became the subject matter of his indictment, Caucci was asked another question relating to "associates" as follows:

> JUROR: Did you borrow any money from anyone associated with Anthony Plate?
> THE WITNESS: Not that I know -- you know, what do you mean associated?
>
> (App. A-40)

No response was ever given to the Caucci question above stated, either by the Juror or by the United States Attorney in attendance and questioning Caucci, at the Grand Jury testimony on February 12, 1979, which became the basis of his indictment.

As aforesaid, nothing in the record indicates that Caucci considered the informant, Maricondi, to be an associate of his, whatever, in fact, associate may mean to either Maricondi, Caucci, members of the jury both Grand and petit, and to the prosecuting attorney. There is not a scintilla of evidence establishing that Maricondi was, in fact, an associate of Caucci, of any of the various types which could be conjured up to describe the word "associate".

As to the second question in Count III, there must be some evidence of record that Maricondi told the defendant at some time that the money he owed to Plate was on a loan, and specifically on a loan-shark loan. No such evidence exists of record, in Maricondi's testimony, or otherwise, that he was paying an exorbitant ie: a loan-shark rate of interest to Plate. Further and perhaps most significantly, both of the

answers by the Defendant Caucci to the questions presented, which consisted of the basic matters charging Count III of the indictment began with the statement "not that I know of". The net effect of such a preface, if one analyzes the statement, simply means that the defendant Caucci, at the time when the question was propounded to him, had no present knowledge of the matters contained in the question and/or did not recollect or recall. Certainly, in so far as both the questions and the answers, set forth in Count III of the indictment, they are neither so precise as to question or so precise as to answer as to form the basis of a charge and of a conviction of the crime of prejury.

Certainly, as the Court said in United States vs. Slawik 548 F. 2nd 75 (3 Cir. 1977): "We think it fair to say that if transcriptions of electronic interceptions

are to be the basis for false swearing prosecutions, we will insist that the Government's interrogation be far more precise than in this case." In the instant case not only was the interrogation not precise but the very answers of the defendant himself indicated that he had no present knowledge, recall or recollection of the matters contained however imprecisely in the interrogation.

Words are extraordinarily important in a prosecution for perjury, for it is the words which are the crime. Therefore, in such a prosecution, careful use of words becomes of absolute importance. United States vs. Rozzaia 375 Supp. 577 (D. Conn. 1973). A literally truthful answer, even if misleading by implication or oral mission, is not perjury, and requires an acquittal. United States vs. Kehoe 562 Fed. Supp. 65 (1st Cir. 1977).

From the foregoing it is evident that the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the United States District Court's judgment of conviction after trial by jury, conflicts with the Fifth Amendment in that the trial court proceedings, which it affirmed, denied due process of law and fundamental fairness of trial to the petitioner.

B.

The decision of the Fifth Circuit affirming the judgment of conviction at the trial by jury of the United States District Court conflicts with the Fifth Amendment and denies due process to the petitioner of law and fundamental fairness of trial, in that the United States District Court failed to give the jury the complete reinstructions requested by said jury after

they had commenced their deliberations, as to the elements of "specific intent", and the definition of "knowingly", required to convict under a perjury indictment.

After deliberations of the jury in the District Court had begun, the jury as aforesaid, by note, requested the District Court to instruct them as to the material four things that they had to decide to arrive at a decision in this perjury matter. The Court then instructed the jury that there were only three things which they must find, those being the three elements for perjury. At that time the defendant Caucci requested that along with the three instructions then given by the Court that the Court read Defendant's Requested Jury Instruction Number Five, which had initially been read to the jury. This request was denied.

The requested Jury Instruction Number Five defined "knowingly" and also informed the jury that they must find the defendant had specific intent to commit the crime of perjury as charged.

The Court did further instruct the jury not to put special emphasis on any one instruction but to take all the instructions as a whole, including those which had been previously read to them.

Thus the supplemental jury charge given by the District Court was misleading to the jury since the jury had asked for the "four things" they had to find but the Court instructed them on actually but three things to be found, and required the jury to decide from all the prior instructions given them as a whole what the fourth element to be found consisted of. Unwittingly the Court's supplemental charge gave

the impression to the members of the jury that there were only three things to be found by the jury before they could find the defendant guilty.

It is clear that actually the jury did remember, when they asked the Court the question for supplemental charge, that there were four things which they had to find to convict. The four items were: the three elements of the crime other than materiality, plus specific intent. In order to fully answer the jury's question in its supplemental charge, it was necessary for the Court, in all fairness to the defendant, in order that there be no prejudice to the defendant by the supplemental charge, that the Court reinstruct the jury on Requested Jury Instruction Number Five which defined the term "knowingly" but more important informed the jury that this

was a specific intent crime and that the Government must prove specific intent. This is particularly true because one of the principle defenses put forth by the defendant Caucci was the fact that the Government had failed to establish knowledge and specific intent of the defendant Caucci. It was therefore highly prejudicial for the District Court to fail to once again instruct the jury as to specific intent, and the meaning of "knowingly", and to instruct specifically, evidence of knowledge and specific intent as necessary before the jury could find the defendant guilty, as charged, of the crime of perjury.

If the jury had not specifically asked the Court, by note, as to the four material things which they said it told them in prior instructions they must base their decision on, perhaps the three elements stated by the Court in its supplemental

charge, plus the Court's instructions not to put special emphasis on any one instruction, but to take all the instructions as a whole, might have been sufficient to apprise the jury on what it needed to know to proceed with its deliberations. But the fact that four material things were specifically requested by the jury in its note to the Court made it misleading and prejudicial for the Court not to advise the jury as to the four material things required before the defendant could be found guilty, which aforesaid included the very important element that the jury must find the defendant had specific intent to commit the charge with a definition of the word "knowingly".

Too great a burden was put upon the jury to remember from all the instructions given by the Court what the fourth material factor and element of the crime actually was.

Having specifically asked for the instructions as to all four points they should have been given, in fairness to the defendant Caucci, and the failure to do so was clearly prejudicial and the denial of due process.

Within the framework of Federal Rule of Criminal Procedure 52.b, it was "plain error".

From the foregoing it is evident that the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the United States District Court's judgment of conviction after trial by jury, conflicts with the Fifth Amendment in that the trial court proceedings, which it affirmed, denied due process of law and fundamental fairness of trial to the petitioner.

C.

The decision of the Fifth Circuit affirming the judgment of conviction at trial by jury of the United States District Court conflicts with the Fifth Amendment and denies due process to the petitioner of law and fundamental fairness of trial, in that the United States District Court had denied the petitioner Caucci's Motion for Mistrial based on the prosecutor in the trial court being permitted to argue to the jury, as if it were a proven fact, that Caucci, the defendant in the United States District Court, had borrowed money from one Tony Plate, where the issue of fact had already been decided adversely to the Government, based upon the District Court's entry of a judgment of acquittal at the close of all the evidence of Counts I and II of the three count indictment

against Caucci, Count I charging that Caucci had made a false declaration before the Grand Jury when he said that he had never borrowed any money from Tony Plate.

From the foregoing it is evident that the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the United States District Court's judgment of conviction after trial by jury, conflicts with the Fifth Amendment in that the trial court proceedings, which it affirmed, denied the due process of law and fundamental fairness of trial to the petitioner.

D.

The decision of the Fifth Circuit affirming the judgement of conviction at trial by jury of the United States District Court conflicts with the Fifth Amendment and denies due process to the petitioner

of law and fundamental fairness of trial, in that during its argument to the jury the Government, in an attempt to establish knowledge and specific intent argued facts Government Counsel believed would show a relationship between Caucci and Tony Plate. Government's Counsel stated that Caucci had talked about a loan for $1,000, as establishing a relationship between himself and Plate. Specifically the Government's comment to the jury was as follows: "The defendant had a personal relationship with Plate. He said, in the last conversation, that he saw Plate once a week for a short time, and he had paid him $600.00. He talks about a loan for $1,000 earlier, establishing his relationship with Plate. He knew of this loan, or owing - what this owing was about."

It is clear that this comment by the prosecution substantiously prejudiced

Caucci, denying him a trial which was fundamentally fair since Count I of his indictment charged him with perjury by denying that he had ever borrowed money from Tony Plate. As aforesaid, the Court had acquitted him as to that Count.

The main position of Caucci, in his own argument to the jury, dealt with the fact that the Government had failed to prove that the defendant had any knowledge of why the informant Maricondi owed money to Tony Plate.

The Government's reference to the $1,000 loan to Caucci from Plate was an effort to offset this argument by showing that Caucci, himself, had borrowed money from Tony Plate, and therefore he must have known that the money owed by Maricondi to Plate was by reason of a loan. The prior granting of a judgment of acquittal of Caucci by the District Court on the question of whether he himself had ever borrowed money from Plate

shows clearly that this issue had been resolved against the Government and that therefore under the principal of collateral estoppel, the Government should have been prevented from arguing that Caucci had, indeed, borrowed money from Plate. The comment by the jury to the Government was therefore improper, extremely damaging and highly prejudicial to Caucci.

The position taken by the Fifth Circuit in affirming the decision below was based apparently upon the posture that the doctrine of collateral estoppel had been applied only in the contest of a single proceeding. The instant case is clearly distinguishable from cases which so state.

A perfect example is the rationale in the case of United States vs. Buttram 432 F. Supp., 1269 (W.D.P.A. 1977); in that cause, ie: the Buttram decision, all of the decisions of the jury in that case in the three

count indictment occurred at the same time. From the case at bar, Buttram is clearly distinguishable since the decision, acquitting Caucci as to Count I, occurred prior to the defendant going forth with his own case. Thus, the Government had prior litigated this issue, ie: whether or not the defendant had ever received a loan from Tony Plate, and lost. Nevertheless, it still insisted on contending it be the trust and was permitted to argue the same to the jury as evidence of guilt of the defendant on the third count of his indictment.

The decision of the Fifth Circuit herein apparently is based on the premise that the collateral estoppel doctrine applies only where a defendant faces two or more seperate trials but has no relevence to one defendant facing one trial on two or more counts. This position is totally distinguished by

the fact that here the District Court granted Caucci's motion for judgment of acquittal before closing argument so that in effect it was not a single trial for the argument portion of the trial but a second trial for the argument portion of the cause. However, the Government was then allowed to argue as evidence against Caucci the very point upon which he had already been acquitted, ie: whether or not the defendant had ever received a loan from Tony Plate. Nevertheless, although prior to argument, this question had been litigated and decided in favor of Caucci, the Government was permitted to insist that same was the fact and the truth in arguing to the jury as to Count III upon which the defendant was eventually convicted. This is in clear error, a denial of due process and fundamental fairness, and could not possibly have been more substantially prejudicial to the rights of the petitioner Caucci.

From the foregoing it is evident that the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the United States District Court's judgment of conviction after trial by jury, conflicts with the Fifth Amendment in that the trial court proceedings, which it affirmed, denied the due process of law and fundamental fairness of trial to the petitioner.

CONCLUSION

In accordance with the foregoing, the decision of the Fifth Circuit Court of Appeals of January 27, 1981, affirming the judgment of conviction of the United States District Court for the Southern District of Florida, conflicts with the Fifth Amendment to the United States Constitution and denies the petitioner due process of law and fundamental fairness of trial.

By reason of the foregoing, the relief sought herein by the petitioner should be granted, and the Writ of Certiorari should be issued forthwith.

Respectfully submitted;

ANTHONY "TONY" CAUCCI,
Pro-Se

APPENDIX A

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANTHONY "Tony" CAUCCI,
Defendant-Appellant.

No. 80-5144
Summary Calendar

United States Court of Appeals
Fifth Circuit
Unit B

January 27, 1981

The United States District Court for the Southern District of Florida, James C. Paine, J., convicted defendant of falsely testifying before a grand jury, and defendant appealed. The Court of Appeals, Frank M. Johnson, Jr., Circuit Judge, held that: (1) evidence was sufficient to sustain conviction; (2) trial court's failure, when reinstructing jury, to redefine "knowingly" or restate that crime

required proof of specific intent did not warrant reversal; (3) instruction that it is ordinarily reasonable to infer that person intends natural and probable consequences of acts knowingly done or knowingly committed did not shift burden of proof to the defense and was not plain error; and (4) denial of motion for mistrial on basis of prosecutor's reference to alleged loan was not plain error.

Affirmed.

Appeal from the United States District Court for the Southern District of Florida.

Before RONEY, FRANK M. JOHNSON, Jr., AND HENDERSON, Circuit Judges.

FRANK M. JOHNSON, Jr., Circuit Judge:

Appellant Anthony Caucci appeals from his conviction, after trial by jury, on the third count of a three count indictment charging him with falsely testifying before a grand jury.(1) The district court

1. 18 USC 1623

granted Caucci's motion for judgment of acquittal on counts one and two.

Before becoming an undercover government agent Louis Maricondi borrowed $15,000 from Tony "T.P." Plate, a reputed Florida loan shark, at a usurious rate of interest.(2) Maricondi had asked either Caucci or Caucci's father to borrow the money from Plate, and Caucci's father obtained the money from Plate. Maricondi, ostendibly to open a new business, went to Florida as an undercover agent on a government investigation of Plate and others. Maricondi asked the government to advance him the unpaid amount of the loan because, as he told the government, it would be very difficult to start a business in Florida while he was indebted to Plate. The government asked Maricondi to find

2. Maricondi stated that he paid $400.00 interest per week on the $15,000 loan. Over a two year period he paid about $40,000, including payments on the principal, and yet still owed Plate $10,000.

someone who could verify the existence of the loan and also renogotiate its repayment terms with Plate. In a recorded telephone conversation Maricondi asked Caucci to talk to Plate about Maricondi's debt; Maricondi and Caucci disagreed on whether the debt was $10,000 or $15,000. During the conversation Caucci stated that he, Caucci, owed Plate $1,000, and also referred to a prior debt which he had owed to Plate and which he had paid when he became frightened. In a second recorded conversation, Caucci told Maricondi that Plate had agreed to new terms concerning Maricondi's debt which were more favorable to Maricondi.

A grand jury, investigating Plate and others, subpoenaed Caucci to testify concerning Plate's loan-sharking activities. Caucci testified under oath that he had never told anyone he had borrowed money from Plate. In addition he testified as follows:

A JUROR: You said you never borrowed any money personally from Anthony Plate. Have you ever had any associates of yours that ever borrowed any money?

THE WITNESS (CAUCCI): Not that I know of. If anybody did, they didn't tell me about it. People don't really tell things if they borrow money like that.

Q. (By Mr. Schwartz) Nobody ever told you that he owed Plate money, a loan-sharking loan?

A. Not that I know of, and if they did, I wouldn't pay any attention, wouldn't want to know.

The first count of the three count indictment charged that Caucci had made a false declaration before the grand jury when he said that he had never borrowed any money from Plate. The second count charged that he had lied when he testified that he had not told anyone he had borrowed money from Plate. The third count charged that he had lied when he stated that none of his associates had ever borrowed money from Plate. The district court did not explain its reasons for entering its

judgment of acquittal on counts one and two, but evidently the court concluded that the government had failed to establish beyond a reasonable doubt that Caucci had borrowed money from Plate.

SUFFICIENCY OF THE EVIDENCE

(1,2)

Caucci's first contention on appeal is that the evidence was insufficient to support his conviction because the government did not establish that his statements were knowingly false declarations made with the specific intent to commit the crime of perjury. He emphasizes that the words "associates" and "loan shark" in the questions are vague and ill defined. (3) Caucci concedes that the government was required to prove only that one of the two questions set out in count three was answered perjuriously. See United

States v. Abrams, 568 F. 2d 411, 419 (5th Cir.), cer. denied, 437 U.S. 903, 98 S. Ct. 3089, 57 L. Ed. 2d 1133 (1978). Caucci argues that the government failed to establish that he knew that Maricondi had borrowed money from Plate. Although the words "loan" and "borrowed" were used in the phone conversations between Maricondi and Caucci, the jury could certainly conclude from the evidence that Caucci knew that Maricondi's indebtedness to Plate had resulted from a loan. Actual knowledge of falsity may be proven from circumstantial evidence. United States v. Cuesta, 597, F. 2d 903, 920-21 (5th Cir.), cert. denied, 444 U.S. 964, 100 S.Ct. 451,62, L.Ed.2d 377 (1979).

3. Appellant in his brief has misquoted the second question, referring to a "loan shark loan", which is the indictment version of the question, rather than the question proved at trial to have been asked by the grand jury.

The evidence indicated that Caucci was intimately familiar with the loan transaction between Plate and Maricondi. Maricondi had asked Caucci or Caucci's father to negotiate the loan, Caucci and Maricondi had discussed the amount of Maricondi's debt to Plate, and Caucci renegotiated the debt with Plate. In reviewing the sufficiency of the evidence we must view the evidence and all the inferences that reasonably might be drawn from it in a light most favorable to the government. Hamling v. United States, 418 U.S. 87, 124, 94 S.Ct. 2887, 2911, 41 L.Ed.2d, 590 (1974; Glaser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457,469,86 L.Ed. 680 (1941); United States v. Rodgers, 624, F.2d, 1303, 1306 (5th Cir. 1980). We conclude that the evidence was amply sufficient to show that Caucci knew that Maricondi had borrowed money from Plate.

Caucci also argues that, because the evidence failed to establish that he knew that Maricondi had borrowed money from Plate at a usurious interest rate, he could not have lied when he negatively answered the question "Nobody ever told you that he owed Plate money, a loansharking loan?" Caucci was familiar with the loan transaction, having been asked by Maricondi to speak to Plate about the loan to Maricondi and it is most improbable that Caucci could have renegotiated the terms of the loan without knowing or learning that the interest rate was usurious. In the phone conversations with Maricondi, Caucci made references to the fact that he (Caucci) had been indebted to Plate on two occasions and had once repaid him because he became frightened. Further, Caucci told Maricondi that Plate was "not gonna bother nobody" because "He's got enough heat on

him" and added that "If you wait, they're liable to put him away." From the evidence that Caucci knew of the terms of Plate's loan to Maricondi and that Plate was a loan shark, the jury was entitled to conclude that Caucci knew that Maricondi's loan was a "loan-sharking loan".

Finally Caucci argues that, because the word "associates" was subject to varying interpretations, he could not have deliberately answered the grand jury falsely. It is noted that earlier in his testimony before the grand jury Caucci asked for clarification of the terms "associates" when asked if he had ever borrowed any money from anyone associated with Anthony Plate. Caucci did not ask for clarification when later asked about any of his associates. He answered without evading the question of qualifying his answer and from the record did not evidence any hesitancy

in answering the question as presented. See United States v. Whitaker, 619 F.2d 1142, 1148 (5th Cir. 1980).

Caucci relies on Bronston v. United States, 409 U.S. 352, 93 S.Ct. 595, 34 L. Ed.2d 568 (1973), in which the Court reversed the defendant's perjury conviction because the prosecutor failed to follow a non-responsive but literally true answer with a more precise question. Bronston expressly declined to reach the issue of the ambiguity of the question, it did note that "(p)recise questioning is imperative as a predicate for the offense of perjury." Id. at 356, 362, 93 S.Ct. at 599,601. Bronston was concerned with a situation where the declarative statement that was made was literally true regardless of the context of the question asked, rather than with the situation where a "yes or no" answer was given, the truth of which

can be ascertained only in the context of the question asked. See United States v. Cuesta, supra, 597, F2d. at 920. There is no Bronston situation in this case.

(3) Although the question at issue in this case could perhaps have been more clear or precise, we cannot conclude that they were so imprecise as a matter of law that they were insufficient to support a perjury conviction. United States v. Whitaker, supre, 619 F2d. at 1148-49; United States v. Calimano, 576 F2d. 637, 640-42 (5th Cir. 1978).

The function of this Court on review of the sufficiency of the evidence is to determine whether, viewing the evidence in a light most favorable to the government, the jury could reasonably conclude that the evidence is inconsistent with every reasonable hypothesis of innocence. United States v. Rodgers, supra, 624 F2d. at 1306; United

States v. Gonzalez, 617 F2d 104, 106 (5th Cir 1980). In other words, the standard of review is whether, based on the evidence, a reasonably minded jury must necessarily entertain a reasonable doubt of the defendant's guilt. United States v. Gonzalez, supre, 617 F.2d at 106.

We conclude that the evidence was sufficient to support Caucci's conviction.

JURY INSTRUCTIONS

Caucci contends that the district court erred when it reinstructed the jury on the offense without also redefining "knowingly" or restating that the crime required proof of specific intent. He also contends that the district court erred by giving an instruction that shifted the burden of proof from the government to defendant.

Within an hour after beginning deliberations, the jury requested a supplementary

charge on the "material four things you said we must make a decision on". The court repeated its initial instruction on those elements (4) prefacing it with the caution that "(y)ou must consider the instructions as a whole, and not give any part of it more weight than any other part". In its initial instruction the court fully instructed the jury on the definition of "knowingly" and on the meaning and definition of specific intent, and also emphasized that the jury must consider the instructions as a whole.

(4) This Court's decision in United States v. Gaultney, 606 F.2d 540 (5th Cir. 1979),

4. The trial court, having determined as a matter of law and having so instructed the jury in its original instruction that the defendant's declarations before the grand jury were material to possible crimes being investigated by the grand jury, and thus that the fourth element of the crime had been proved, did not reinstruct the jury on that element. The court reinstructed the jury that the prosecution was required to prove beyond a reasonable doubt that: 1. Caucci appeared before the grand jury; 2. he was sworn and on his oath when he so appeared; and 3. "that being duly sworn and upon his oath, the said defendant did knowingly make false declarations and (sic) proceedings before a Federal Grand Jury."

clearly answers Caucci's contention. There, the defendant unsuccessfully argues that the court erred in its supplemental charge to the jury by refusing to recharge on specific intent and reasonable doubt, and also by inaccurately defining intent by failing to refer to specific intent. As here, the trial judge expressly cautioned the jury in the supplemental charge "not to consider his supplemental charge in an isolated context, but to consider the entire charge as given, ascribing no greater weight to the supplemental charge than to the original charge." United States v. Sutherland, 428 F.2d 1152, 1157-58, (5th Cir. 1970) cert. denied, 409 U.S. 1078, 93 S. Ct. 698, 34 L.Ed.2d 668 (1972)." Id. at 548. Also here, as in Gaultney, the original and supplemental charges, when considered as a whole, sufficiently instructed the jury on the applicable law.

Caucci relies on Bland v. United States 299 F.2d 105 (5th Cir. 1962), but Bland is clearly distinguishable. There the indictment charged the defendants with bringing aliens into this country knowing that they were not entitled to enter. In reinstructing the jury four hours after they retired, the judge failed to remind them that guilty knowledge was an essential element of the offense. The judge merely reread the applicable statute to the jury, which was prejudicial error to the defendants because the statute itself did not expressly state that the offense must be committed willfully or knowingly, and thus the jury was not reinstructed on the defendants' sole defense.

The district court in this case did reinstruct the jury that in order to convict they must find that Caucci knowingly made the false declarations. Furthermore, there is no

indication that the court in Bland cautioned the jury in its supplemental charge to consider the instructions as a whole without giving more weight to one part than to another. The district court in this case took proper steps to avoid prejudice to the defendant by twice stating in its supplemental instruction that all the instructions must be considered as a whole. See United States v. Meadows, 598 F.2d, 984,990 (5th Cir. 1979). Evaluating the trial court's actions in the light of the totality of the circumstances and considering the complete instructions given, we find no reversible error in the trial court's failure to reinstruct the jury on the definitions of specific intent or "knowingly". United States v. Colatriano, 624 F.2d 686, 690 (5th Cir. 1980).

(5) Caucci also argues that the trial court's original instruction that "(i)t is ordin-

arily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly committed" erroneously shifted the burden of proof to the defense. Caucci did not raise this objection attrial; there he objected that the instruction on specific intent made the instruction on general intent unnecessary.

Fed. R.Crim.P. 30 provides that "(n)o party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." See Henderson v. United States, 425 F.2d, 134,144 (5th Cir. 1970). Because Caucci failed to state to the trial court as a ground of his objection to the jury instruction that the sentence now objected to an appeal erroneously shifted to him the burden of proof, we must consider whether the court's

instruction constituted "plain error" within the meaning of Fed.R.Crim.P. 52(b)(5) United States v. Freeman, 619,F.2d 1112,1123, (5th Cir.), cert. denied, 426 U.S. 949, 96 S.Ct. 3168, 49 L. Ed.2d 1185 (1976); United States v. Jackson, 569 F.2d 1003, 1010 (7th Cir.), cert. denied, 437 U.S. 907, 98 S.Ct. 3096, 57L.Ed. 1137 (1978).

(6-8) Instructions to the jury that the shift of burden of proof of intent from the government to the defendant constitute plain error where the sole defense is lack of intent. Mann v. United States, 319 F2d, 404, 410 (5th Cir. 1963), cert. denied, 375 U.S. 986, 84 S.Ct. 520, 11 L.Ed.2d 474 (1964). Indeed, such burden-shifting instructions stating a presumption rather than an inference of intent violate the Due Process Clause. Sandstrom v.

(5) Fed. R. Crim. P. 52(b) provides: Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Montana, 422 U.S. 510,99 S.Ct. 2450, 61L.Ed.2d 39 (1979); Tyler v. Phelps, 622 F.2d, 172 (5th Cir. 1980). However, this court in United States v. Chiantese, 560 F.2d 1244,1255 (5th Cir. 1977) (en banc), cert. denied, 441 U.S. 922, 99 S.Ct. 2030, 60 L.Ed.2d 395 (1979), held that a burden-shifting instruction does not automatically require reversal. A burden-shifting instruction such as that given in Mann v. United States, supra, is not plain error where there is evidence before the jury of objective conduct demonstrating criminal intent. United States v. Chiantese, 582 F.2d, 974,977&n.11 (5th Cir. 1978) (panel on remand from en banc court); United States v. Spiegel, 604 F. 2d 961,970 (5th Cir. 1979). (9) The sentence of the instruction which is at issue in this case is nearly identical to language contained in the instructions given in United States v. Freeman, supra, 619 F.2d 1123-24, and United States v. Wilkinson, 460

F.2d 733 (5th Cir. 1972). The language in Wilkinson's instruction was approved by the Court's en banc decision in United States v. Chiantese, 560 F.2d, 1244, 1255-56 (5th Cir. 1977) cert. denied, 441 U.S. 922,99 S.Ct. 2030, 60 L. Ed.2d 395 (1979). Freeman and Wilkinson, which held that such language does not shift the burden of proof on intent to the defendant, are dispositive of Caucci's contention. Because the instruction given by the district court did not shift the burden of proof on intent to Caucci, we conclude that there was no reversible error in the instruction.

PROSECUTION'S CLOSING ARGUMENT

(10) Finally, Caucci contends that the prosecutor's reference to a $1,000 "loan" from Plate to Caucci was prohibited by the doctrine of collateral estoppel because his acquittal on count one (charging him with falsely

testifying that he never borrowed money from Plate) necessarily constituted a determination that he had not borrowed money from Plate. Caucci's motion for a mistrial on the basis of the prosecutor's reference to the loan was denied.

(11-12) The collateral estoppel doctrine applies "when an issue of ultimate fact has once been determined by a valid and final judgment". Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189 25 L.Ed.2d 469 (1970); United States v. Hartley, 612 F.2d 1009, 1010 (5th Cir. 1980); United States v. Larkin, 605 F.2d 1360, 1369-70 (5th Cir. 1979); cert. denied, -------U.S.--------, 100 S.Ct. 2160, 64 L.Ed.2d 793(1980); United States v. Mock 604 F.2d 341, 343-44 (5th Cir. 1979). The rule of collateral estoppel also prevents redetermination of evidentiary facts as well as ultimate facts. United States v. Lee, 622 F.2d 787,789 (5th Cir. 1980).

(13-14) Collateral estoppel may operate in two distinct ways: (1) it may completely bar a subsequent prosecution; or (2) although the subsequent prosecution may proceed, it may operate to bar the introduction or argumentation of certain facts necessarily established in a prior proceeding. United States v. Mock. supra,604 F.2d at 338. Although double jeopardy necessarily includes collateral estoppel, collateral estoppel does not equate with or include double jeopardy. Id at 338 n.1.. In this case only the second of the two types of collateral estoppel cases discussed in Mock would be relevent.

Caucci cites no case in which the doctrine of collateral estoppel has been applied in the context of a single proceeding. Cases involving this doctrine have been concerned with attempts to relitigate issues resolved in prior trials or proceedings.

E.g., United States v. Larkin, supra, 605 F.2d at 1369-71; United States v. Lee, supra, 622 F.2d 787.

(15) A contention similar to that made by Caucci was rejected in United States v. Buttram, 432 F.Supp. 1269 (W.D.Pa. 1977), aff'd without opinion, 568 F.2d 770 (3rd Cir.), cert. denied, 435 U.S. 995, 98 S.Ct. 1646, 56 L.Ed.2d 84 (1978). There, the defendant Buttram argued that his acquittal by the jury on the first two counts of a three count indictment amounted to a finding that a certain person was not Buttram's agent. He contended that the doctrine of collateral estoppel barred conviction on the third count because a finding that the agency relationship existed was essential to a conviction on count three, and the jury had necessarily rejected the existence of an agency relationship in reaching its verdict on the first two counts.

The district court held that the collateral estoppel doctrine of Ashe v. Swenson, supra, applies to "a defendant facing two separate trials but clearly (has) no relevence to one defendant facing one trial on two or more counts." 432 F.Supp. at 1273-74 (emphasis in original) Buttram is distinguishable because there the jury acquitted on two counts of a three count indictment, while here the district court granted Caucci's motion for judgment of acquittal at the close of all the evidence, before closing argument. Although noting this distinction, we conclude that it does not support Caucci because we do not believe the doctrine of collateral estoppel is to be applied in the context of a single trial.

(16) Because Caucci's motion for a mistrial was not made until after the conclusion of the summation and because he failed to object to

the prosecutor's comments when made, we may grant relief only if he can show, in the context of the trial, that the remarks amounted to plain error under Fed.R.Crim.P. 52(b). United States v. Soto, 591 F.2d 1091, 1101 (5th Cir.), cert denied, 442 U.S. 930,99 S.Ct. 2862, 61 L.Ed.2d 198 (1979). We conclude that Caucci's conviction on count three was not barred by collateral estoppel, and that the district court's denial of Caucci's motion for a mistrial was not plain error since, upon examination of the entire record, substantial prejudice to Caucci does not appear.

AFFIRMED.

APPENDIX B

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT I

On the 12th day of February, 1979, in the Southern District of Florida, ANTHONY "Tony" CAUCCI, while under oath as a witness before Grand Jury No. 78-2, Fort Lauderdale, Florida, empaneled by the United States District Court on the Southern District of Florida, in the investigative proceeding United States v. John and Jane Doe, knowingly did make false declaration, that is to say:

At the time and place aforesaid the Grand Jury was engaged in an investigation concerning the possible making or extortionate extensions of credit by one Anthony "Tony", "TP" Plate, in violation of Title 18, United States Code, Section 892, and the collection

of extensions of credit by extortionate means by one Anthony "Tony" "TP" Plate, in violation of Title 18, United States Code, Section 894, and other crimes related thereto.

It was a matter material to said Grand Jury investigative proceeding to determine whether ANTHONY "Tony" CAUCCI, while under oath, did knowingly declare before said Grand Jury with respect to the aforesaid material matter, as follows:

Q. You never borrowed any money from Anthony Plate:

A. No, sir.

Q. On no occasion did you borrow money from Anthony Plate, even without interest rates?

A. No. That I never did.

***

Q. And, it's your statement that you never borrowed any money from Anthony Plate?

A. No, I didn't.

***

Q. Did you ever borrow a thousand dollars from Anthony Plate?

A. No. I never borrowed any money from him.

***

The aforesaid testimony of ANTHONY "Tony" CAUCCI, as he then and there well knew and believed, was false in the ANTHONY "Tony" CAUCCI had borrowed money from Anthony "Tony", "TP" Plate.

All in violation of Title 18, United States Code, Section 1623.

THE GRAND JURY FURTHER CHARGES THAT:

COUNT 2

On the 12th day of February, 1979, in the Southern District of Florida, ANTHONY "Tony" CAUCCI, while under oath as a witness before Grand Jury NO. 78-2, Fort Lauderdale, Florida, empaneled by the United States District Court in the Southern District of Florida, in the

Southern District of Florida, in the investigative proceeding United States v. John and Jane Doe, knowingly did make a false material declaration, that is to say:

At the time and place aforesaid the Grand Jury was engaged in an investigation concerning the possible making of extortionate extensions of credit by one Anthony "Tony", "TP" Plate, in violation of Title 18, United States Code, Section 892, and the collection of extensions of credit by extortionate means by one Anthony "Tony", "TP" Plate, in violation of Title 18, United States Code, Section 894, and other crimes related thereto.

It was a matter material to said Grand Jury investigative proceeding to determine whether or not ANTHONY "Tony" CAUCCI, while under oath, did knowingly declare before said Grand Jury with respect to the aforesaid material matter, as follows:

Q. Did you ever tell anybody that you borrowed money from Anthony Plate?

A. No. I don't have any reason to.

***

Q. What banks were you financed by?

A. The Chemical Bank in New York City, Barclay's Bank here.

***

Q. And, its your statement that you never borrowed any money from Anthony Plate?

A. I didn't.

***

Q. You never told anybody you did?

A. No. As a matter of fact I am still paying the banks in New York back for it.

The aforesaid testimony of ANTHONY "Tony" CAUCCI, as he then and there well knew and believed, was false in that on or about and between June 29, 1977, and September 28, 1977, ANTHONY "Tony" CAUCCI did state to Louis Maricondi that ANTHONY "Tony" CAUCCI had borrowed money from Anthony "Tony","TP" Plate.

All in violation of Title 18, United States Code, Section 1623.

THE GRAND JURY FURTHER CHARGES THAT:

COUNT 3

On the 12th day of February, 1979, in the Southern District of Florida, ANTHONY "Tony" CAUCCI, while under oath as a witness before Grand Jury No. 78-2, Fort Lauderdale, Florida, empaneled by the United States District Court in the Southern District of Florida, in the investigative proceeding United States v. John and Jane Doe, knowingly did make a false material declaration, that is to say.

At the time and place aforesaid, the Grand Jury was engaged in an investigation concerning the possible making of extortionate extensions of credit by one Anthony "Tony","TP" Plate, in violation of Title 18, United States Code, Section 892, and the collection of extensions of credit by extortionate means by one Anthony "Tony" "TP" Plate, in violation of United States Code, Section 894, and other crimes related thereto.

It was a matter material to said Grand Jury investigative proceeding to determine who had borrowed money from Anthony "Tony", "TP" Plate.

At the time and place aforesaid, ANTHONY "Tony" CAUCCI, while under oath, did knowingly declare before said Grand Jury with respect to the aforesaid material matter, as follows:

Q. You said you never borrowed any money personally from Anthony Plate? Have you ever had any associates of yours that ever borrowed any monies?

A. Not that I know of. If anybody did, they didn't tell me about it. People don't really tell things if they borrow money like that.

Q. Nobody ever told you that he owed Plate money on a loanshark loan?

A. Not that I know of, and if they did, I wouldn't want to pay any attention, I wouldn't want to know.

The aforesaid testimoney of ANTHONY "Tony" CAUCCI, as he then and there well knew

and believed, was false in that on or about and between June 28, 1977, and September 29, 1977, ANTHONY "Tony" CAUCCI and Louis Maricondi discussed an extortionate extension of credit made by Anthony "Tony", "TP" Plate to Louis Maricondi.

All in violation of Title 18, United States Code, Section 1623.

A TRUE BILL.

APPENDIX C

18 USC SECTION 1623

FALSE DECLARATIONS BEFORE GRAND JURY OF COURT

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if ---

1. each declaration was material to the point in question, and
2. each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof

that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court of grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

A P P E N D I X D

VARIOUS QUESTIONS AND ANSWERS IN TESTIMONY BEFORE THE FEDERAL GRAND JURY IN FT. LAUDERDALE - - FEBRUARY 12, 1979

A JUROR: You said you never borrowed any money personally from Anthony Plate. Have you ever had any associates of yours that ever borrowed any money?

THE WITNESS: (CAUCCI) Not that I know of. If anybody did they didn't tell me about it. People don't really tell things if they borrow money like that.

Q: (BY MR. SCHWARTZ) Nobody ever told you that he owed Plate money, a loan-sharking loan?

A: Not that I know of, and if they did, I wouldn't want to pay any attention, wouldn't want to know.

JUROR: Did you borrow any money from anyone associated with Anthony Plate?

THE WITNESS: Not that I know --- you know, what do you mean associated?

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING WAS PLACED IN THE UNITED STATES MAIL THIS DAY OF , 1981, TO THE UNITED STATES ATTORNEY:

ATLEE W. WAMPLER, III
300 Ainsley Building
Miami, Florida 33101

AND TO THE OFFICES OF THE UNITED STATES ATTORNEY GENERAL, WASHINGTON, D. C.

ANTHONY "TONY" CAUCCI
Pro-Se

1981